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Congress of the United States
House of Representatives
Washington, DC 20515-4306
March 9, 2007

The Honorable Joseph T. Kelliher
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman Kelliher:

I am writing to solicit the views of the Federal Energy Regulatory Commission (the Commission) on the recently announced leveraged buyout of Texas Utilities Corporation (TXU) by Kohlberg Kravis Roberts & Co., Texas Pacific Group and Goldman Sachs, among others. I understand that the transaction is worth about \$45 billion and that it may be completed this year. I am seeking reassurance that this proposed deal receives the scrutiny by the Commission and the public that it deserves, and that the interests of ratepayers will be adequately protected.

I know the importance to the nation of adequate, reliable supplies of electricity at affordable prices. For decades the Electric Reliability Council of Texas (ERCOT) systems met the electricity needs of Texans in this way. For decades TXU served the people of my district in this way. Now, however, electric rates in states surrounding Texas are lower than electric rates in Texas. Over the course of a few short years, the price paid by Texans for electricity has gone from among the most reasonable in the country to among the top 5 most costly areas of America. The cost of power in Texas now ranks on average only slightly behind that of New York and California. That causes me to question whether the Texas electricity generation and delivery system is actually working in the best interest of Texans.

Moreover, I question whether or not the independence of ERCOT from Commission jurisdiction is currently warranted and viable. ERCOT maintains its singular treatment primarily because it is an intra- rather than an interstate system. In order to avoid strengthening the argument, propounded by many, that ERCOT should be subject to Commission jurisdiction, ERCOT continues to isolate itself from the availability of interstate power. This may no longer make good policy or economic sense. The realities of today's electricity marketplace may call for an opening of ERCOT to a more robust

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interstate system, and to jurisdiction of the same regulatory authority that regulates other interstate electricity delivery throughout the United States.

I want to ensure first and foremost that the leveraged buyout by KKR is in the best interest of the ratepayers of Texas. If New York investors benefit as well, all the better. I will not, however, stand idly by while investors from New York or anywhere else benefit on the backs of the Texas electricity grid or the Texas ratepayers.

In the Energy Policy Act of 2005, we amended section 203 of the Federal Power Act and enacted the Public Utility Holding Company Act of 2005. Congress also authorized the Electricity Reliability Organization. I want to ensure that this transaction is adequately scrutinized by the Commission to determine whether any Federal statutes under the purview of the Commission are applicable. Accordingly, please respond to the following questions:

1. What would be the implications of opening ERCOT to the availability of interstate power and to Commission jurisdiction?
2. Does section 203 of the Federal Power Act (FPA) and the Commission's regulations thereunder apply to any aspect of the proposed transaction? Is this transaction and every aspect of it within ERCOT?
3. Would this transaction meet the "consistent with the public interest" standard of section 203 of the FPA? Would any cross-subsidization that will result from this transaction be "consistent with the public interest" as stated in FPA section 203?
4. Would TXU meet the Commission's market power tests to be able to sell wholesale energy at market-based rates or would TXU be required to sell at cost-based rates?
5. Does the Public Utility Holding Company Act of 2005 (PUHCA 2005) and the Commission's regulations thereunder apply to any aspect of the proposed transaction?
6. Does the proposed transaction, including the commitment to cancel eight planned coal-fired power plants, pose any reliability issues that must be addressed by the Commission or the ERO? Does the Commission have the authority it needs to review such reliability concerns? If not, please provide legislative language that would give the Commission such authority to review this transaction, and others in the ERCOT region.
7. If the Commission believes that it lacks authority to review this proposed transaction under FPA section 203 or PUHCA 2005, please provide legislative language that would give the Commission the authority to review this transaction, and others in the ERCOT region, under FPA section 203 and PUHCA 2005.

8. Please provide legislative language that would give the Commission the authority to regulate TXU and other utilities in the ERCOT region, under the FPA.
9. How is this buyout affecting customers in Texas?
10. How will the KKR buyout and the reduction of power available to Texans affect electricity prices in Texas? (Assume the TXU data presented to the Public Utility Commission of Texas as justification for the need to build its planned 11 power plants is accurate. If you do not believe this information is accurate, please explain why). Please be as specific as possible addressing short, medium and long-range pricing.
11. Are there any other issues in this transaction that would implicate Commission jurisdiction?

I would appreciate your answers to these questions as soon as possible, but no later than March 30, 2007. Thank you very much for your attention to this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Joe Barton", with a stylized flourish at the end.

Joe Barton
Member of Congress